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No. 04-623

IN THE

Supreme Court of the United States

ALBERTO GONZALES, ATTORNEY GENERAL, et al.,
Petitioners.
v.

STATE OF OREGON, *et al.*,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

BRIEF FOR AMICUS CURIAE LIBERTY COUNSEL IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether the Attorney General has permissibly construed the Controlled Substances Act, 21 U.S.C. 801, *et seq.*, and its implementing regulations to prohibit the distribution of federally controlled substances for the purpose of facilitating an individual's suicide, regardless of a state law purporting to authorize such distribution.

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INTEREST OF AMICUS CURIAE[1]

Liberty Counsel is a non-profit civil liberties education and legal defense organization devoted to preserving religious liberty, the sanctity of human life and traditional families. Liberty Counsel has worked on legislation, public policy and litigation throughout the country as part of its mission to ensure that the Founding Fathers' commitment to the inalienable right to life remains firmly ensconced in our cultural foundation. The issues raised in the present action are critical to the continued preservation of the inalienable right to life in this country, and must be given thorough and thoughtful consideration by this Court. Liberty Counsel is concerned that the issue of the sanctity of human life not be overlooked in the Court's analysis and respectfully submits this brief to assist the Court in its examination of that issue.

SUMMARY OF ARGUMENT

This case is not merely about states' rights or regulation of the practice of medicine, but something far more fundamental and far more consequential – protection of the sanctity of life of the nation's most vulnerable and fragile citizens. Oregon's Death with Dignity Act threatens more

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[1] Liberty Counsel files this brief with the consent of all parties. The letters granting consent of the parties are attached hereto with the filing of this brief. Counsel for a party did not author this brief in whole or in part. No person or entity, other than *Amicus Curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

than 200 years of constitutional, statutory and regulatory protection of the inalienable right to life. By interpreting the Controlled Substances Act ("CSA") to prohibit physicians from prescribing controlled substances for assisted suicide, the Attorney General has acted to shore up the sanctity of human life from the damage done by Oregon's assisted suicide law.

The Attorney General's determination that the prescription of controlled substances for assisted suicide is not a legitimate medical purpose under the CSA helps protect the inalienable right to life, one of the founding principles of the nation. Oregon's Death with Dignity Act undermines this Court's commitment to the sanctity of human life as expressed in *Washington v. Glucksberg*, 521 U.S. 702 (1997), *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261 (1990) and *Vacco v. Quill*, 521 U.S. 793 (1997). The Attorney General has helped re-strengthen those precedents by preventing the prescription of controlled substances to assist in terminating life.

The Attorney General's actions also preserve more than a century of state court precedents upholding the inalienable right to life. Numerous states have repeatedly upheld the right against attempts such as Oregon's to develop qualified rights based upon purported evaluations of the "quality of life."

Most importantly, Petitioner's actions manifest a proper exercise of the Government's duty to secure the right to life for all citizens of this country, and most especially those who are suffering from disabilities or chronic or terminal illnesses.

ARGUMENT

I. THE ATTORNEY GENERAL HAS PROPERLY EXERCISED HIS ROLE AS PROTECTOR OF THE INALIENABLE RIGHT TO LIFE.

A. The Inalienable Right To Life Has Been Recognized And Protected Since Before The Birth Of This Nation.

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed...

The Declaration of Independence, para.2 (U.S. 1776).[2]

As these words penned by the Founding Fathers attest, "We have built our system of government on the platform of fundamental rights by regarding them as inalienable possessions of all persons." Avila, *Assisted Suicide and the Inalienable Right to Life*, 16 ISSUES L. & MED. 111, 112 (2000) ("*Assisted Suicide*"). "Many persons have come to rely

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[2] In addition, the constitutions of at least twenty-three states "refer expressly to the 'unalienable' or 'inalienable' right to life." *See* Avila, *Assisted Suicide and the Inalienable Right to Life*, 16 ISSUES L. & MED. 111, 141 n.6 ("*Assisted Suicide*").

on the security provided by the status of being regarded by the government as possessing an inalienable right to the protection of life." *Id.* at 112-113.

The concept of an inalienable right to life arose from writers such as John Locke, who "asserted that each individual owed a duty to God to preserve his or her life." *Id.* at 114.[3] "Accordingly, individuals obliged by divine sanction to protect their lives neither held the power to license other individuals to imperil their lives nor possessed the authority to release the sovereign from its corresponding duty to defend their lives." *Id.* "Any supposed freedom to consent to the interference with one's own life would conflict with one's personal duty before God and therefore constitute a nullity." *Id.* "Thus a government could not usurp this property interest under the guise of a social compact." *Id.* This promise that "the law will regard all lives as inalienable, associating these lives with a particular level of protection and status, weaves itself in and through" the history of our founding. *Id.* at 118.

This is borne out not only in the explicit declaration of the inalienable right to life in the Declaration of Independence, but also in the Constitution, which "established a governmental system best suited to secure the rights embraced by the Declaration of Independence,"especially the most fundamental of these rights – the right to life. Torzilli, *Reconciling the Sanctity of Human Life, The Declaration of Independence, and the Constitution,* 40 CATH. LAW. 197, 215-216 (2000). Therefore, while the founders first

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[3] Citing John Locke, Second Treatise on Government: An Essay Concerning the True Origin, Extent, and End of Civil Government §6, in J. LOCKE, TWO TREATISES OF GOVERNMENT 117 (M. Goldie ed., Everyman Library 1993) (1690).

enunciated the right to life, liberty and the pursuit of happiness in the Declaration of Independence, they established the means to protect those "natural human rights from governmental curtailment" through the Constitution and Bill of Rights. *See id.*

Therefore, the government's obligation to uphold the Constitution of the United States means that it is obligated to protect the inalienable right to life for all citizens without regard for issues such as the "quality of life." Oregon has disregarded its obligation and declared that the inalienable right to life does not apply to terminally ill patients. The Attorney General responded properly to this derogation of duty by ensuring that physicians would not be permitted to participate by prescribing controlled substances.

B. The Attorney General Has Properly Stepped In To Protect The Right To Life From Threatened Extinction By The Oregon Assisted Suicide Law.

> If an individual disregards the duty he owes to his Creator to continue living, the duty still remains. Since the duty persists, so does the right. The right is inalienable. In other words, a person who no longer wishes to continue living and consents to another's deadly actions still has the duty and therefore the right to continue living. This right remains and continues to protect the individual from the harmful actions of others even when the individual no longer wishes to be protected. A government that seeks to secure inalienble rights must prohibit and punish such harmful

> actions even when the individual would consent to them.

Comment and Note, *Vacco v. Quill and the Inalienable Right to Life*, 11 REGENT L. REV. 373, 391 (1999) ("Comment"). "Since life is the right to have rights, all other rights are contingent and secondary. Death is not even a secondary right; it is the extinction of rights." Bopp and Avila, *The Due Process 'Right to Life' in Cruzan and Its Impact on 'Right-to-Die' Law,"* 53 U. PITT. L. REV. 193, 210 (1991) ("*Right to Life*").

By legalizing assisted suicide, Oregon has abrogated its duty to protect the right to life for all of its citizens under the guise of a protecting a social compact with a particular segment of the population. Neither that segment of the population nor any other group has the authority to release the state from its duty to defend the inalienable right to life. Oregon has sanctioned the extinction of the most fundamental human right and abrogated its duty to prohibit and punish the actions of those who want to deprive citizens of their right to life. The state is obligated to regard ALL lives as inalienable – not merely those lives deemed to be of sufficient "quality."

Since Oregon failed to fulfill its obligations to protect the right to life for all Oregonians, the Attorney General acted properly by stepping in to restore the promise left meaningless by adoption of the Death with Dignity Act. As the "hand of the president in taking care that the laws of the United States in protection of the interests of the United States in legal proceedings and in the prosecution of offenses be faithfully executed,"[4] the Attorney General must ensure that the

[4] *Ponzi v. Fessenden*, 258 U.S. 254, 262 (1922).

inalienable right to life is secured for all citizens and protected against government abridgement. By interpreting the CSA to prohibit the prescription of controlled substances for assisted suicide, the Attorney General has protected the right to life from the government truncation and degradation inherent in Oregon's Death with Dignity Act. By utilizing his power to regulate physician prescriptions under the CSA, the Attorney General did what Oregon failed to do by prohibiting actions that would harm the fundamental right to life. The Attorney General's ruling prohibiting prescriptions of controlled substances to assist in suicide is a proper exercise of his obligation to secure the inalienable rights of the citizens of the United States.

C. The Attorney General Has Restored Inalienability Of The Right To Life For Terminally Ill Patients.

As one commentator eloquently stated:

> A law such as the Oregon Death with Dignity Act declares those deemed eligible for suicide assistance to be outside the criminal and civil codes' full protection, thereby reneging on a fundamental promise first expressed in the Declaration of Independence. No longer are all lives regarded as inalienable. Far from constituting a harmless action no more detrimental than technical trespass, the legalization of suicide assistance strikes at the heart of the relationship between the government and the individual by qualifying the law's full protection against killing

> according to one's physical qualities and proximity to death, thereby interfering with the status of being regarded as having an inalienable right to the protection of life.

Assisted Suicide at 129. Oregon has attempted to alienate what is inalienable under the guise of granting more autonomy to its citizens to choose their time and method of death. What Oregon has failed to acknowledge, however, is that "[w]here civil government exists to secure inalienable rights, the autonomy of individuals necessarily will be constrained." Comment, at 392. Under a pure system of personal autonomy, a person would be free to kill another if the killer and victim both agreed. *Id.* However, when "it is acknowledged that individuals possess inalienable rights and government exists to secure these rights, a man does not have this freedom." *Id.* "One man may not kill another, even on request, because every man has an inalienable right to life." *Id.* "No man can get away from the right; it exists as long as he lives. It is a part of his very essence." *Id.* at 393 (citing *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 295 (1990) (Scalia, J., concurring)). "Although civil government should not interfere with an individual's fulfillment of, or failure to fulfill, his duty to live, it should proscribe the actions of others that violated the inalienable right to life that flows from that duty." Comment at 393. That is what the Attorney General has done in this case.

By permitting terminally ill patients to request help in committing suicide, Oregon has deprived an entire class of people of their inalienable right to life. *See Assisted Suicide*, at 136. Oregon has told an entire segment of its population that they are no longer worthy to be endowed with an inalienable right to life. At a time when someone has been

diagnosed as terminally ill and most needs safeguarding, the state is telling him that he now has less protection in his inalienable right to life. What would otherwise be a crime – depriving someone of his inalienable right to life – can be disregarded so long as law enforcement is satisfied that the vulnerable, terminally ill patient has "consented," either directly or indirectly through a surrogate decisionmaker. *See id.* The state argues that assisted suicide is only an option and therefore does not lessen the value of life. However, the mere act of providing an option communicates to terminally ill patients that what was an inalienable right has become alienable.

The Attorney General's interpretation of the CSA to prohibit controlled substance prescriptions for assisted suicide helps restore the inalienable right to life to terminally ill patients in Oregon and ensures that right will be protected for other citizens who might face similar laws in the future. Far from overstepping his bounds, the Attorney General has acted responsibly to preserve and protect the sanctity of human life.

II. THE ATTORNEY GENERAL HAS ACTED PROPERLY TO PROTECT THIS COURT'S PRECEDENTS UPHOLDING THE GOVERNMENT'S INTEREST IN THE PRESERVATION OF LIFE.

By concluding that physicians cannot prescribe controlled substances for the purpose of assisting suicide, the Attorney General has properly carried out his duty to uphold this Court's precedents that affirm the government's pre-eminent interest in protecting the inalienable right to life.

A. The Attorney General Has Upheld The Government's Unqualified Interest In Preservation Of The Right To Life Addressed In *Washington v. Glucksberg.*

Referencing the Model Penal Code's prohibition against aiding suicide, this Court echoed the code drafter's observation that "the interest in the sanctity of life that are represented by the criminal homicide laws are threatened by one who expresses a willingness to participate in taking the life of another even though the act may be accomplished with the consent, or at the request of the suicide victim." *Washington v. Glucksberg,* 521 U.S. 702, 716 (1997). "Washington has an unqualified interest in the preservation of human life. The State's prohibition on assisted suicide, like all homicide laws, both reflects and advances its commitment to this interest." *Id.* at 728. The state "has an interest in protection of vulnerable groups – including the poor, the elderly, and disabled persons – from abuse, neglect, and mistakes." *Id.* at 731. "The State's assisted-suicide ban reflects and reinforces its policy that the lives of the terminally ill, disabled, and elderly people must be no less valued than the lives of the young and healthy, and that a seriously disabled person's suicidal impulses should be interpreted and treated the same way as anyone else's." *Id.* at 732.

By contrast, Oregon's assisted suicide law reflects a policy that the lives of terminally ill people are of less value than are the lives of those who have not been so diagnosed. The Attorney General's interpretation of the CSA alleviates the effects of Oregon's statute and restores to the terminally ill some of the inherent value taken away by the Death with Dignity Act.

B. The Attorney General Has Properly Refused To Apply The "Quality Of Life" Analysis Rejected in *Cruzan v. Director.*

As this Court said in *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 280 (1990), "As a general matter, the States – indeed, all civilized nations – demonstrate their commitment to life by treating homicide as a serious crime." "Moreover, the majority of States in this country have laws imposing criminal penalties on one who assists another to commit suicide." *Id.* That commitment to life means that "[a] State may properly decline to make judgments about the 'quality' of life that a particular individual may enjoy, and simply assert an unqualified interest in the preservation of human life to be weighed against the constitutionally protected interest of the individual." *Id.* at 282.

Oregon has failed to assert that unqualified right for its citizens, but has instead established a qualified inalienable right to life available only for those who have a quality of life deemed sufficient to warrant protection. Such a conditional right to life is antithetical to this Court's precedents as well as the principles espoused by the Founding Fathers.

The Attorney General, in his role as representative of the United States, must decline to make the "quality of life" judgments inherent in Oregon's Death with Dignity Act. Instead, he must assert the government's unqualified interest in the preservation of life. He has fulfilled this obligation by prohibiting physicians from prescribing controlled substances to assist in suicide and thereby restoring to terminally ill patients full inalienability of their right to life.

C. The Attorney General Has Protected The Most Vulnerable Citizens From Degradation Of Their Right To Life As Provided in *Vacco v. Quill.*

The state's interest in preservation of the right to life is particularly compelling when, as here, it is aimed at protecting the most vulnerable from deprivation of their inalienable right to life. *See Vacco v. Quill,* 521 U.S. 793, 798 (1997). Assisted suicide "is contrary to the prohibition against using the tools of medicine to cause a patient's death." *Id.* at 801. While a physician might use controlled substances in a palliative sense and thereby hasten a terminally ill patient's death, that is a far cry from using controlled substances in a manner intended to cause death. *See id.* at 802. In the former instance, "the physician's purpose and intent is, or may be, only to ease his patient's pain." *Id.* "A doctor who assists a suicide, however, 'must necessarily and indubitably, intend primarily that the patient be made dead'." *Id.* Therefore, while the former can be seen as a legitimate medical purpose – relief from pain – the latter is nothing more than a deliberate attempt to do the ultimate harm – terminate life. *See id.*

Oregon's assisted suicide law ignores this critical distinction and places actions intended to end life on par with actions aimed only at relieving pain. The Attorney General has restored the distinction by ruling that actions aimed at ending life are not legitimate medical purposes under the CSA. In so doing, the Attorney General appropriately followed this Court's precedent in *Vacco* and safeguarded the right to life from the erosive effect of Oregon's law.

The Attorney General has helped reverse Oregon's undermining of this Court's unequivocal protection of the sanctity of human life as enunciated in *Glucksberg, Cruzan*

and *Vacco.* As a result, all citizens of Oregon will continue to enjoy the inalienable right to life regardless of whether they are terminally ill or have some other purported "quality of life" issue.

III. THE ATTORNEY GENERAL'S INTERPRETATION OF THE CSA PRESERVES MORE THAN A CENTURY OF STATE PROTECTION OF THE INALIENABLE RIGHT TO LIFE.

For more than 100 years, state courts have protected the right to life as "not only sacred in the estimation of the common law, but ... inalienable." *Martin v. Commonwealth,* 184 Va.1009,1018-1019 (1946).

> The lives of all are equally under the protection of the law, and under that protection to their last moment. The life of those to whom life has become a burden – of those who are hopelessly diseased or fatally wounded – nay, even the lives of criminals condemned to death, are under the protection of the law, equally as the lives of those who are in the full tide of life's enjoyment, and anxious to continue to live.

Blackburn v. State, 23 Ohio St. 146, 163 (1872).

> Purposely and maliciously to kill a human being, by administering to him or her poison, is declared by the law to be murder, irrespective of the wishes or the condition of

the party to whom the poison is administered, or the manner in which, or the means by which, it is administered. The fact that the guilty party intends also to take his own life, and that the administration of the poison is in pursuance of an agreement that both will commit suicide, does not, in a legal sense, vary the case. If the prisoner furnished the poison to the deceased for the purpose and with the intent that she should with it commit suicide, and she accordingly took and used it for that purpose; or, if he did not furnish the poison, but was present at the taking thereof by the deceased, participating, by persuasion, force, threats, or otherwise, in the taking thereof, or the introduction of it into her stomach or body; then, in either of the cases supposed, he administered the poison to her, within the meaning of the statute. Her act of *taking* and *swallowing* it, in his presence and by his direction, was his act of *administering* it.

Id. Similarly, the Michigan Supreme Court found a husband who had mixed poison with water and left it for his wife to drink, at her request, guilty of murder. *People v. Roberts*, 211 Mich. 187, 196 (1920).[5] "He who kills another at his own desire or command is a murderer as much as if he had done it

[5] Overruled in *People v. Kevorkian*, 447 Mich. 436 (1994) as to the proposition that assisted suicide is murder instead of a separate felony. The overruling does not affect the substance of the argument cited above.

of his own hand; and the person killed is not a felo de se." *Id.* In this case, controlled substances are being used instead of poison, and a physician is the third party administering the means of death. However, neither those factors nor the passage of time alter the conclusion inherent in the Attorney General's actions – that legalizing assisted suicide is antithetical to preservation of the inalienable right to life.

California law has prohibited assisted suicide since 1873, and courts have consistently upheld that prohibition based upon preservation of the right to life. *See In re Joseph G.*, 34 Cal.3d 429, 435 (1983). Among the reasons that justify criminalization of assisted suicide is "the belief that the sanctity of life is threatened by one who is willing to participate in taking the life of another, even at the victim's request." *Donaldson v. Lungren*, 2 Cal. App. 4th 1614, 1624 (1992). "No statute or judicial opinion countenances Donaldson's decision to consent to be murdered or to commit suicide with the assistance of others." *Id.* at 1622. The state's interest in punishing assisted suicide is justified not only by the commitment to preserving human life, but also the state's interest in preventing potential abuses. *Id.* at 1624, citing *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261(1990). Such potential abuses are also at the heart of the Attorney General's actions. The aim of the CSA is to regulate the distribution of controlled substances to avoid potential abuses. That includes restricting the prescription of controlled substances by physicians to legitimate medical purposes. The potential abuses inherent in permitting a third party to aid in terminating a person's life means that assisted suicide cannot be regarded as a "legitimate medical purpose," as the Attorney General has rightly determined.

In keeping with the long history of condemnation of assisted suicide, the Alaska Supreme Court rejected

terminally ill patients' requests that their physicians be exempted from Alaska's manslaughter statute criminalizing assisted suicide. *Sampson v. State*, 31 P.3d 88, 89 (Alaska 2001). Citing this Court's rulings in *Glucksberg* and *Cruzan*, the Alaska high court held that "there can be little doubt that substantial state interests underlie the manslaughter statute's general ban of assisted suicide." *Sampson*, 31 P.3d at 96. Chief among these state interests are the interests in preserving life, preventing suicide, protecting vulnerable people, protecting the integrity of the medical profession, and regulating dangerous substances and activities. *Id.* These same state interest underlie the Attorney General's action of banning physicians from participating in assisted suicide through the prescribing of controlled substances.

"In Wisconsin, the interest in preserving life is of paramount significance." *Montalvo v. Borkovec*, 256 Wis. 2d 472, 488 (Wis. App. 2002)(citing *In re L.W.*, 167 Wis. 2d 53, 90 (1992)). The interest in preserving life encompasses "both the interest in preserving the patient's life and the interest in preserving the sanctity of all life." *In re L.W.*, 167 Wis.2d at 90. Here the Attorney General has acted to preserve the lives of terminally ill patients. In so doing, the Attorney General has help halt a gradual erosion of the right to life that, if left unchecked could threaten the sanctity of all life.

The Nevada Supreme Court agrees that "[t]he State's interest in preserving life is both fundamental and compelling. Indeed, it constitutes a basic purpose for which governments are formed." *McKay v. Bergstedt*, 106 Nev. 808, 816 (1990). The State's interest in preserving all human life is neither abstract nor indirect and "should not be suspended or minimized under any conditions." *Id.* Oregon's Death with Dignity Act represents just such a minimization, as the right to life becomes dependent upon whether the life is of

sufficient "quality" or expected duration to warrant being protected. Banning the prescription of controlled substances to prevent such a minimization restores the fundamental and inalienable nature of the right to life.

Affirming that every person has a right to life which cannot be denied absent clear and convincing evidence of the express will of the affected person, New York's highest court rejected the "quality of life" analysis inherent in Oregon's assisted suicide law. *See Matter of O'Connor*, 72 N.Y.2d 517, 530 (1988). In *O'Connor*, the court re-affirmed its "fundamental commitment to the notion that no person or court should substitute its judgment as to what would be an acceptable quality of life for another" when it granted the hospital's request to insert a nasogastric feeding tube into a incompetent patient. *Id.* Questions regarding which rights should prevail must be resolved in favor of life. *Id.* The Attorney General's interpretation of the CSA is just such a resolution, as controlled substances are used only to preserve life, not promote death.

New Hampshire's Supreme Court affirmed that the State has compelling interests in preserving life and preventing suicide which can overcome individuals' rights to privacy and self-determination. *In re Caulk*, 125 N.H. 226, 232 (1984). People should not be placed in the precarious position of choosing between their statutory and constitutional obligations to preserve life and contravening legal duties. *Id.* at 231. This is the precise dilemma that would be faced by physicians under Oregon's assisted suicide law. They would be placed in the precarious position of having to choose between their obligation to preserve life and their legal duty to assist patients under Oregon law. Recognizing, as did the New Hampshire Supreme Court, that no one should be placed in such a situation, the Attorney General appropriately

dissolved the dilemma by prohibiting physicians from using controlled substances to assist a patient in committing suicide.

The Attorney General's interpretation of the CSA to prohibit prescriptions of controlled substances for assisted suicide helps preserve the tradition of state protection of the sanctity of human life from the threatened erosion present in Oregon's Death with Dignity Act.

IV. THE ATTORNEY GENERAL'S INTERPRETATION OF THE CSA PROPERLY PROTECTS THE INTEGRITY OF THE MEDICAL PROFESSION AND ITS COMMITMENT TO HEALING AND THE PRESERVATION OF LIFE

The Attorney General's interpretation of the CSA also comports with his duty to protect the integrity of the medical profession and its commitment to the sanctity of human life.

The American Medical Association has maintained a persistent stance against assisted suicide as the antithesis of the physician's calling. "The power to assist in intentionally taking the life of a patient is antithetical to the central mission of healing that guides physicians." AMA letter in support of H.R. 1003, 143 CONG REC. S3249-01 (April 15, 1997). "The AMA continues to stand by its ethical principle that physician-assisted suicide is fundamentally incompatible with the physician's role as healer...." *Id.* Indeed, the AMA has consistently re-affirmed its ethical prohibition against physician-assisted suicide. *See* AMA Code of Medical Ethics §2.211 (1994). Physician-assisted suicide has long been viewed as outside the realm of legitimate health care. Brief for the American Medical Association at 4, *Washington v. Glucksberg*, 521 U.S. 702 (1997). Therefore, as the Attorney

General determined, the prescription of controlled substances for assisted suicide is not a legitimate medical practice under the CSA, and physicians cannot use their federally issued controlled substances licenses for such purposes.

As this Court said in *Washington v. Glucksberg*, 521 U.S. 702, 731 (1997), "The State also has an interest in protecting the integrity and ethics of the medical profession." Citing the AMA's Code of Medical Ethics §2.211, this Court found that Washington was justified in banning assisted suicide since physician-assisted suicide could undermine the trust that is essential to the doctor-patient relationship by blurring the line between healing and harming.

Similarly, the Attorney General is justified in prohibiting physicians from participating in assisted suicides and thereby undermining the inherent trust in the doctor-patient relationship.

The Nevada Supreme Court agreed that, "The State has an unquestioned duty to see that the integrity of the medical profession is preserved and that it is never allowed to become an instrument for the selective destruction of lives deemed to have little utility." *McKay v. Bergstedt* 106 Nev. 808, 824 (1990). The Attorney General has done just that by prohibiting physicians from participating in Oregon's qualified right to life through the prescribing of controlled substances for assisted suicide.

CONCLUSION

Oregon's Death with Dignity Act's attempted validation of physician-assisted suicide is antithetical to preservation of the inalienable right to life guaranteed by the Declaration of Independence and U.S. Constitution. The Attorney General has appropriately responded to that potential

degradation of the right to life by prohibiting physicians from prescribing controlled substances for assisted suicides. Far from being a usurpation of the Attorney General's powers, the prohibition against assisted suicide is a recognition of the continuing importance of the inalienable right to life granted to all men by their Creator.

For these reasons, the lower court ruling must be reversed.

Respectfully Submitted,

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